

[Lawsuit filed April 18, 2007]

IN THE IOWA DISTRICT COURT FOR DICKINSON COUNTY

STATE OF IOWA, ex rel., IOWA)	LAW NO. _____
DEPARTMENT OF NATURAL)	
RESOURCES (99AG23542),)	
)	
Plaintiff,)	
)	
vs.)	PETITION AT LAW
)	
BRIDGES BAY RESORT, L.L.C.,)	
)	
Defendant.)	

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources (DNR) and for its claim against Defendant Bridges Bay Resort, L.L.C. (Bridges Bay), states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Defendant Bridges Bay Resort L.L.C. for repeated illegal discharges of sediment to East Okoboji Lake with resulting water quality violations. In addition, Bridges Bay failed to comply with National Pollutant Discharge Elimination System (NPDES) Storm Water General Permit No. 2, failed to implement a pollution prevention plan, and illegally burned solid waste at its construction site.

Parties

2. The State of Iowa is a sovereign state of the United States of America.

3. The DNR is a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.

4. Defendant Bridges Bay is a limited liability company organized in the State of South Dakota and authorized to do business in this state. Its principal place of business is 3211 W. Sencore Drive, Sioux Falls, South Dakota 57107.

Jurisdiction

Water Pollution Control Regulations

5. The DNR is the agency of the state responsible for the prevention, abatement, or control of water pollution. Iowa Code § 455B.172(1). Rulemaking authority for establishing water quality and effluent standards is contained in Iowa Code section 455B.173(2). Rulemaking authority relating to disposal systems is contained in Iowa Code section 455B.173(3).

6. The dumping, depositing, or discharging of pollutants into any water of the state except adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the DNR is prohibited by Iowa Code section 455B.186(1).

7. A pollutant whether treated or untreated shall not be discharged into any state-owned natural or artificial lake. Iowa Code § 455B.186(1). Sediment is a "pollutant" as defined in Iowa Code section 455B.171(18).

8. A "water of the state" means "any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof." Iowa Code § 455B.171(37). East Okoboji Lake is a "water of the state" as defined in Iowa Code section 455B.171(37).

9. "High quality waters" means those waters designated as such in 567 Iowa Admin. Code chapter 61, which exceed the levels described in chapter 61 as necessary to protect existing water uses. The chemical integrity of these waters is enhanced and distinguished as high quality by the exceptional water clarity necessary to protect and maintain the existing designated uses of these waters. Examples include the cold water streams designated by the Iowa Conservation Commission (now the DNR) as Iowa's catchable and special trout streams, and the Iowa Great Lakes Chain. 567 Iowa Admin. Code 60.2. East Okoboji Lake is designated as a high quality water resource under 567 Iowa Admin. Code chapter 61.

10. Surface waters shall be free from materials attributable to wastewater discharge or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions. 567 Iowa Admin. Code 61.3(2)"c."

11. Surface waters shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to animal life. 567 Iowa Admin. Code 61.3(2)"d."

12. A person who violates any provision of part 1 of division III of Iowa Code chapter 455B or any permit, rule, standard, or order issued under part 1 of division III of chapter 455B shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(1).

13. The Attorney General shall, at the request of the director with approval of the Environmental Protection Commission (EPC), institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of

part 1 of division III of chapter 455B or any rules promulgated or any provision of any permit issued under part 1 of division III of chapter 455B.

Storm Water Discharge Regulations

14. The director of the DNR is authorized to issue storm water discharge general permits for a class of facilities which could be described as conditioned by a single permit. Iowa Code § 455B.103A(1); 567 Iowa Admin. Code 64.4(2)(a)(1).

15. “[S]torm water” is defined as storm water runoff, snow melt runoff, and surface runoff and drainage. 567 Iowa Admin. Code 60.2.

16. No person shall operate any wastewater disposal system or part thereof without or contrary to any condition of an operation permit issued by the director. 567 Iowa Admin. Code 64.3(1).

17. The DNR has adopted a general permit for Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. 567 Iowa Admin. Code 64.15(2).

18. An applicant proposing to conduct activities covered by NPDES General Permit No. 2, Storm Water Discharge Associated with Industrial Activity for Construction Activities, is required to file a complete Notice of Intent by submitting to the DNR the following: 1) a fully completed Notice of Intent application form (Form 542-1415); 2) a general permit fee according to the schedule in 567 Iowa Admin. Code 64.16 payable to the DNR; and 3) a demonstration that a public notice was published in at least two newspapers with the largest circulation in the area in which the facility is located or the activity will occur. 567 Iowa Admin. Code 64.6(1)(a)-(c).

19. NPDES General Permit No. 2, Storm Water Discharge Associated with Industrial Activity for Construction Activities, provides that certain storm water discharges associated with industrial activity for construction activities are not authorized by the permit, including storm water discharges associated with industrial activity for construction activities that the Iowa Department of Natural Resources has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard. NPDES General Permit No. 2, Part I.B.2.c.

20. A storm water pollution prevention plan shall be developed for each construction site covered by the permit. Facilities must implement the provisions of the storm water pollution prevention plan. NPDES General Permit No. 2, Part IV.

21. The pollution prevention plan shall be signed in accordance with Part VI.G., and be retained at the construction site from the date construction activities begin to the date of final stabilization. NPDES General Permit No. 2, Part IV.B.1.

22. The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States and which has not been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified in Part IV.D.2. of the permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharge associated with industrial activity for construction activities. NPDES General Permit No. 2, Part IV.C.

23. For common drainage locations that serve an area with more than 10 disturbed acres at one time, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. NPDES General Permit No. 2, Part IV.D.2.A.(2)(a).

24. Qualified personnel (provided by the discharger) shall inspect disturbed areas of the construction site that have not been finally stabilized at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater. NPDES General Permit No. 2, Part IV.D.4.

25. Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph IV.D.1. of the permit and pollution prevention measures identified in the plan in accordance with paragraph IV.D.2. of the permit shall be revised as appropriate as soon as practicable after such inspection. NPDES General Permit No. 2, Part IV.D.4.B.

26. All contractors and subcontractors identified in a storm water pollution prevention plan in accordance with Part IV.D.7.A. of the permit shall sign a copy of a certification statement before conducting any professional service at the site identified in the storm water pollution prevention plan. NPDES General Permit No. 2, Part IV.D.7.B.

27. If there is a construction trailer, shed or other covered structure located on the property, the permittee shall retain a copy of the storm water pollution prevention plan required by the permit at the construction site from the date of project initiation to the date of final stabilization. NPDES General Permit No. 2, Part V.B.

28. The permittee must comply with all conditions of the permit. Any permit non-compliance constitutes a violation of the Code of Iowa and the Clean Water Act and is grounds for enforcement action. NPDES General Permit No. 2, Part VI.A.1.

29. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment. NPDES General Permit No. 2, Part VI.D.

30. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances), which are installed or used by the permittee to achieve compliance with the conditions of the permit and with the requirements of storm water pollution prevention plans. NPDES General Permit No. 2, Part VI.M.

31. The enforcement provisions of Iowa Code chapter 455B, division III, part 1 of Iowa Code chapter 455B apply to general permits for storm water discharge. Iowa Code § 455B.103A(5).

Air Quality

32. Rulemaking authority relating to evaluation, abatement, control, and prevention of air pollution is contained in Iowa Code section 455B.133(2). 567 Iowa Admin. Code 20-29 contains rules relating to air quality.

33. Any person is prohibited from allowing, causing, or permitting open burning of combustible materials, unless a variance has been granted under 567 Iowa Admin. Code 23.2(2), or one of the exemptions listed in 567 Iowa Admin. Code 23.2(3) applies. 567 Iowa Admin. Code 23.2(1).

34. The Attorney General, at the request of the DNR, may institute a civil action for injunctive relief to prevent any further violations of an order, permit, or rule, or for the assessment of a civil penalty, not to exceed Ten Thousand Dollars (\$10,000.00) per day for each day such violation continues, or both such injunctive relief and civil penalty. Iowa Code § 455B.146.

FACTS

35. On September 19, 2006, the EPC voted to refer the matters described in paragraphs thirty-six (36) through forty-eight (48) to the Attorney General for purposes of initiating judicial enforcement proceedings against Bridges Bay.

36. Effective October 1, 2002 through October 1, 2007, the DNR issued National Pollutant Discharge Elimination System (NPDES) General Permit No. 2 for Storm Water Discharges Associated with Industrial Activity for Construction Activities. A copy of NPDES General Permit No. 2 is attached hereto as Exhibit A, and by this reference is incorporated herein. The permit applies to all areas of the State of Iowa, and includes storm water discharges associated with construction at Bridges Bay's site.

37. Bridges Bay is developing a site located in the SE 1/4 of Section 20, T99N, R36W along the south shoreline of East Okoboji Lake in Dickinson County, Iowa. The property is being developed into a vacation resort with hotel, water park, and condominium housing. Approximately twenty (20) acres have been disturbed.

38. East Okoboji Lake is a state-owned natural lake, designated as a high quality water resource. The chemical integrity of the lake is enhanced and distinguished as high quality.

39. On June 7, 2005, the DNR received a completed Notice of intent to be covered under NPDES Storm Water General Permit No.2 from Bridges Bay for the site referenced above. The application stated that a Pollution Prevention Plan had been developed. On June 14, 2005, the DNR issued authorization to Bridges Bay to begin construction pursuant to NPDES Storm Water General Permit No. 2. Construction at the site commenced on July 14, 2005.

40. On October 4, 2005, DNR officials conducted a storm water compliance inspection at Bridges Bay's site. Bridges Bay's pollution prevention plan was not at the site. The contractor certification statement had not been signed by Bridges Bay's contractors and subcontractors. When Bridges Bay's representatives furnished a copy of the plan, DNR officials noted that it required that Geomattng be installed along the steep lakeshore bank and that perimeter silt fencing be installed along the lake side of the development. The Geomattng had not been installed. DNR officials advised Bridges Bay that the pollution prevention plan must be on site, that the contractor's certification must be signed, and that site dewatering must not be directly discharged into East Okoboji Lake without passing through a control measure.

41. In response to a complaint on October 12, 2005, that Bridges Bay was pumping dirty water into East Okoboji Lake, DNR officials investigated the site that day and observed water being pumped out of a pit. Piping from the pit ran across a temporary road and then into a ravine that emptied into the lake. DNR officials found sediment from the ravine discharging into the lake, and a large brown plume in the lake in the vicinity of the discharge. Bridges Bay was directed to immediately stop the discharge.

42. On April 14, 2006, DNR officials conducted a storm water compliance inspection at Bridges Bay's site. The pollution prevention plan was not on site. The contractor's certification

had not been signed. DNR officials observed that a channel had been dug in the center of the site leading directly to East Okoboji Lake. There were no control measures installed to protect the channel. Geomattng had not been installed along the lakeshore bank as required by the pollution prevention plan. In addition, perimeter silt fencing along the lake side of the development had been knocked down or filled with sediment and was no longer effective. Other perimeter silt fencing was not properly installed because posts had not been set deep enough and backfilled.

43. On May 5, 2006, DNR officials returned to the site to determine whether deficiencies which they had observed had been corrected by Bridges Bay. The contractor certification statement had not been signed. No protective measures had been installed along the open channel in the center of the project. Several silt fences were still not properly installed.

44. On June 13, 2006, DNR officials visited the Bridges Bay project. The contractor certification was not signed. The open channel in the center of the site was not protected by any control measures. Nearly all of the lakeside silt fencing had been knocked down. DNR officials also observed on site a large pile of construction wastes including lumber, drywall, insulation, and plastic being burned.

45. On June 20, 2006, DNR officials conducted a storm water compliance inspection at Bridges Bay's site after a recent rainfall, and observed a large cloud of chocolate colored water in East Okoboji Lake in front of the development. Sediment was discharging directly to the lake from a tube connected to a tile line located around the perimeter of the western most condominium. Samples of the lake showed extremely high levels of total suspended solids (850 mg/l). The contractor statement had not been signed. The open channel in the center of the site

was not protected by any control measures. Virtually all of the lakeside fencing was still knocked down.

46. DNR officials returned to the site on July 13, 2006. While the open channel in the center of the project had been tilled to prevent silt from directly entering the lake, silt fencing which had previously been knocked down was still not repaired, and other areas of silt fencing was not properly installed because posts were not set deep enough or backfilled. The certification statement was not signed.

47. DNR officials conducted a storm water compliance inspection at the site on September 14, 2006. The contractor certification statement was not signed. DNR officials again observed areas where silt fencing had been knocked down.

48. On September 22, 2006 returned to the site after a recent rainfall. DNR officials observed that water in the open channel in the center of the site was a brown color. They also noted that water in the lake at the point where the channel converged with the lake was also a dirty, brown color. Samples of the lake at this point showed a high level of total suspended solids (190 mg/l). Following the open channel upstream, DNR officials observed runoff from exposed areas running underneath silt fences which had not been properly installed and entering the open channel and then flowing to East Okoboji Lake. The contractor statement had not been signed.

Violations

Water Pollution Control Violations

49. On and before October 12, 2005, sediment from Bridges Bay's site was discharged

to a water of the state, and specifically a state-owned natural lake, in violation of Iowa Code section 455B.186(1).

50. On and before June 20, 2006, sediment from Bridges Bay's site was discharged to a water of the state, and specifically a state-owned natural lake, in violation of Iowa Code section 455B.186(1).

51. On and before September 22, 2006, sediment from Bridges Bay's site was discharged to water of the state, and specifically a state-owned natural lake, in violation of Iowa Code section 455B.186(1).

52. On and before October 12, 2005, sediment discharged from Bridges Bay's site caused exceedance of applicable water quality standards in violation of 567 Iowa Admin. Code 61.3(2)"c" and "d."

53. On and before June 20, 2006, sediment discharged from Bridges Bay's site caused exceedance of applicable water quality standards in violation of 567 Iowa Admin. Code 61.3(2)"c" and "d."

54. On and before September 22, 2006, sediment from Bridges Bay's site caused exceedance of applicable water quality standards in violation of 567 Iowa Admin. Code 61.3(2)"c" and "d."

Storm Water Permit Violations

55. Bridges Bay allowed storm water discharges from the site which were not authorized by NPDES General Permit No. 2 because the discharges violated applicable water quality standards in violation of 567 Iowa Admin. Code 64.3(1) and NPDES General Permit No. 2, Part I.B.2.c.

56. Bridges Bay failed to implement the provisions of its storm water pollution prevention plan in violation of 567 Iowa Admin. Code 64.3(1) and NPDES General Permit No. 2, Part IV.

57. Bridges Bay failed to retain the pollution prevention plan at the construction site from the date construction activities begin to the date of final stabilization in violation of 567 Iowa Admin. Code 64.3(1) and NPDES General Permit No. 2, Part IV.A.1.

58. Bridges Bay failed to amend its pollution prevention plan when its original pollution prevention plan proved ineffective in achieving the general objectives of controlling pollutants in storm water discharge associated with industrial activity for construction activities in violation of 567 Iowa Admin. Code 64.3(1) and NPDES General Permit No. 2, Part IV.C.

59. Bridges Bay failed to provide a sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures until final stabilization, although more than 10 acres have been disturbed at the construction site in violation of 567 Iowa Admin. Code 64.3(1) and NPDES General Permit No. 2, Part IV.D.2.A.(2)(a).

60. Bridges Bay failed to revise its pollution prevention plan after inspection of the disturbed areas at the construction site when the inspection indicated that pollution prevention measures identified in the original plan were not adequate in violation of 567 Iowa Admin. Code 64.3(1) and NPDES General Permit No. 2, Part IV.D.4.B.

61. Bridges Bay continuously failed to have the contractor certification signed in violation of 567 Iowa Admin. Code 64.3(1) and NPDES General Permit No. 2, Part IV.D.7.B.

62. Bridges Bay failed to retain a copy of the storm water pollution plan at the construction site from the date of project initiation to the date of final stabilization with a

construction trailer, shed or other covered structure located on the site in violation of 567 Iowa Admin. Code 64.3(1) and NPDES General Permit No. 2, Part V.B.

63. Bridges Bay failed to comply with all conditions of its permit in violation of 567 Iowa Admin. Code 64.3(1) and NPDES General Permit No. 2, Part VI.A.

64. Bridges Bay failed to take all reasonable steps to minimize or prevent any discharge in violation of its permit which had a reasonable likelihood of adversely affecting the environment in violation of 567 Iowa Admin. Code 64.3(1) and NPDES General Permit No. 2, Part VI.D.

65. Bridges Bay failed to at all times properly operate and maintain all of its systems of maintenance and control which it installed at the construction site to achieve compliance with its permit and the requirements of its pollution prevention plan in violation of 567 Iowa Admin. Code 64.3(1) and NPDES General Permit No. 2, Part VI.M.

Air Quality Violation

66. On or before June 13, 2006, Bridges Bay burned construction wastes at its site in violation of 567 Iowa Admin. Code 23.3(1).

Prayer for Relief

WHEREFORE, Plaintiff Iowa Department of Natural Resources respectfully requests that the Court:

a. assess a civil penalty against Bridges Bay pursuant to Iowa Code section 455B.191(1) for each day of violation of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 64.3(1), 61.3(2)"c," 61.3(2)"d," and NPDES General Permit No. 2, Storm Water Discharge Associated with Industrial activity for Construction Activities, not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation, and pursuant to Iowa Code section 455B.146 for each day of violation of 567 Iowa Admin. Code 23.2(1), not to exceed Ten Thousand Dollars (\$10,000.00) for each day of such violation; and

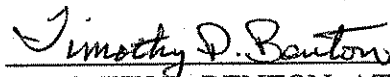
b. issue a permanent injunction pursuant to Iowa Code sections 455B.191(4) and 455B.146 enjoining Bridges Bay from further violations of Iowa Code section 455B.186(1), 567 Iowa Admin. Code 23.2(1), 61.3(2)"c," 61.3(2)"d," 64.3(1), and NPDES General Permit No. 2, Storm Water Discharge Associated with Industrial Activity for Construction Activities.

Plaintiff further requests that the court tax the costs of this action to Bridges Bay and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

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NPDES GENERAL PERMIT NO. 2
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PART I. COVERAGE UNDER THIS PERMIT

- A. PERMIT AREA. This permit covers all areas of the State of Iowa.
- B. ELIGIBILITY.
1. A. Except for discharges identified under Parts I.B.2. and I.B.3., this permit may authorize the discharge of storm water associated with industrial activity from construction sites; (those sites or common plans of development or sale that will result in the disturbance of one or more acres total land area), (hereafter referred to as storm water discharge associated with industrial activity for construction activities) occurring after the effective date of this permit (including discharges occurring after the effective date of this permit where the construction activity was initiated before the effective date of this permit), including storm water discharge associated with industrial activity from areas that are dedicated to producing earthen materials, such as soils, sand and gravel, for use at a single construction site.
 - B. This permit may authorize storm water discharge from a construction site that is mixed with storm water discharge associated with industrial activity from sources other than construction activities provided that the storm water discharge from the industrial (non-construction) source is in compliance with the terms of a NPDES general permit, other than this general permit, or individual permit authorizing such discharge. In addition, the storm water other than from construction, shall be in compliance with Part IV.D.6. of this permit.
2. LIMITATIONS ON COVERAGE. The following storm water discharges associated with industrial activity for construction activities are not authorized by this permit:
- A. storm water discharges that are mixed with sources of non-storm water other than

discharges identified in Part III.A.2. of this permit;

B. storm water discharges associated with industrial activity for construction activities which are covered by an existing individual NPDES permit or which are issued a permit in accordance with Part I.C. of this permit.

Storm water discharges authorized by an existing individual NPDES permit will be eligible to apply for coverage under this general permit as the existing individual permit expires; and

C. storm water discharges associated with industrial activity for construction activities that the Iowa Department of Natural Resources has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard.

3. EXCLUSIONS. The following "storm water discharges associated with industrial activity" from construction activities do not require a NPDES permit:

discharges from agricultural and silvicultural activities including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations as defined in 40 CFR 122.23, concentrated aquatic production facilities as defined in 40 CFR 122.24, discharges to aquaculture projects as defined in 40 CFR 122.25, and discharges from silvicultural point sources as defined in 40 CFR 122.27.

C. REQUIRING AN INDIVIDUAL PERMIT.

1. The Department may require any person authorized by this permit to apply for and obtain an individual NPDES permit. The Department may require any owner or operator authorized to discharge under this permit to apply for an individual NPDES permit only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief

IOWA DEPARTMENT OF NATURAL RESOURCES NPDES GENERAL PERMIT NO. 2
STORM WATER DISCHARGE ASSOCIATED WITH INDUSTRIAL ACTIVITY FOR CONSTRUCTION ACTIVITIES
EFFECTIVE DATE - OCTOBER 1, 2002 TO OCTOBER 1, 2007

statement of the reasons for this decision, an application form, a statement setting a deadline for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES permit, coverage under this general permit shall automatically terminate. If an owner or operator fails to submit an individual NPDES permit application required by the Department under this paragraph, coverage of this general permit automatically is terminated at the end of the day specified for submittal of the individual NPDES application.

2. Any person authorized to discharge under this permit may apply for an individual NPDES permit. In such cases, the discharger shall submit the following in accordance with the requirements of subrule (567)--64.3(4) in the Iowa Administrative Code:

A. an individual application, using DNR Form 1 and EPA Form 2F, and,

B. all applicable fees identified in rule (567)--64.16 in the Iowa Administrative Code.

3. When an individual NPDES permit is issued to a discharger covered under this general permit, the applicability of this general permit to the individual NPDES permittee is automatically terminated on the effective date of the individual NPDES permit.

When an individual NPDES permit is denied to a discharger otherwise subject to this permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Department.

D. AUTHORIZATION.

1. A discharger must submit a Notice of Intent (NOI) in accordance with the requirements of Part II of this permit in order for storm water discharge associated with industrial activity for construction activities pursuant to Part

I.B. of this permit to be authorized to discharge under this general permit.

2. Unless notified by the Department to the contrary, dischargers who submit a Notice of Intent (NOI) in accordance with the requirements of Part II of this permit are authorized to discharge storm water associated with industrial activity for construction activities under the terms and conditions of this permit on the date the completed Notice of Intent was received by the Department or the date construction is scheduled to begin as provided on Form 542-1415 (Notice of Intent) whichever is later. Upon review of the Notice of Intent, the Department may deny coverage under this permit and require submittal of an application for an individual NPDES permit.

PART II. NOTICE OF INTENT (NOI) REQUIREMENTS

A. DEADLINES FOR FILING A NOTICE OF INTENT.

1. Except as provided in Parts II.A.2. and II.A.3. of this permit, Individuals who intend to obtain coverage for an existing storm water discharge associated with industrial activity for construction activities which expired on or after October 1, 2002, shall submit a complete Notice of Intent (NOI) in accordance with the requirements of Part II.C. on or before April 1, 2003.
2. For storm water discharge associated with industrial activity for construction activities where construction begins after October 1, 1992, the NOI requirements specified in Part II.C. of this permit shall be submitted to the Department at least 24 hours prior to the start of construction.

3. **DEFERMENTS.** The application deadline and requirements for storm water discharge associated with industrial activity for construction activities in which the discharge is owned or operated by a municipality

IOWA DEPARTMENT OF NATURAL RESOURCES NPDES GENERAL PERMIT NO. 2
STORM WATER DISCHARGE ASSOCIATED WITH INDUSTRIAL ACTIVITY FOR CONSTRUCTION ACTIVITIES
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serving a population less than 100,000 have been waived until March 10, 2003.

- B. **FAILURE TO NOTIFY.** Dischargers who fail to notify the Department of their intent to be covered, and discharge pollutants to water of the United States within Iowa, without an NPDES permit, are in violation of the Clean Water Act and the Code of Iowa.

- C. **CONTENTS OF THE NOTICE OF INTENT.** A complete Notice of Intent shall include the items described in Parts II.C.1., II.C.2., and II.C.3. of this permit.

1. A completed Notice of Intent (NOI) form, DNR Form 542-1415, signed in accordance with Part VI.G. of this permit. The information on the form shall include the following:

A. Name, address, and location of the construction site for which this notification is submitted. The location should be provided as the 1/4 section, township, range, and the county in which the storm water discharge is located.

B. The owner's name, address, telephone number, and status (federal, state, private, public or other entity).

C. The name, address and telephone number of any operator (contractor) that has been identified as having a role in the storm water pollution prevention plan for the site required under Part IV.D.7. of this permit. Contractors (operators) identified after the submittal of the completed Notice of Intent shall be identified in the pollution prevention plan.

D. The type of discharge (new or existing as related to October 1, 1992); whether or not the discharge is to a municipal separate storm sewer system; the date the discharge is to commence; the permit status of the discharge; and, the name of the receiving waters.

E. An indication if any existing quantitative data is available describing the concentration of pollutants in storm water discharges and a summary of available existing data. (Existing data should not be included as part of the NOI, it should retained as part of the Pollution Prevention Plan).

F. A brief description of the project; an estimated timetable for major activities; and, an estimate of the number of acres of the site on which soil will be disturbed.

G. A certification that compliance with G.(1) through G.(4). are met:

G.(1). the pollution prevention plan has been developed before this Notice of Intent is submitted to the Department;

G.(2). the pollution prevention plan will be implemented on October 1, 1992 for any existing storm water discharge associated with industrial activity for construction activities. For a storm water discharge associated with industrial activity for construction activities that commence after October 1, 1992, the pollution prevention plan shall be implemented with the start of construction activities;

G.(3). this Notice of Intent will be included and incorporated into the pollution prevention plan and will be updated as required; and,

G.(4). the storm water pollution prevention plan provides compliance with section 467A.64 of the Code of Iowa and local sediment and erosion plans and are consistent with the requirements of Part IV of this general permit.

2. **APPLICABLE FEES.** The applicable fees specified in Iowa Administrative Code 567 -- 64.16(455B).

3. **PUBLIC NOTIFICATION.** A demonstration that the public notice specified in Iowa Administrative Code 567--64.6(1)"c"(2) was published at least one day, in at least two

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newspapers with the largest circulation in the area in which the facility is located or the activity will occur.

- D. **WHERE TO SUBMIT.** Facilities which discharge storm water associated with industrial activity for construction activities must submit items described in Parts II.C.1., 2., and 3. of this permit to the Department at the following address:

Storm Water Coordinator
Iowa Department of Natural Resources
Henry A. Wallace Building
502 E. 9th St.
Des Moines, IA 50319-0034

- E. **RENOTIFICATION.** Within 180 days after this general permit expires, the permittee is required to resubmit a completed Notice of Intent with the Department for coverage under the new general permit. If a general permit has not been reissued within 180 days after expiration, the storm water discharger must apply for an individual NPDES permit according to the procedures identified in Iowa Administrative Code 567--64.3(4).

- F. **TRANSFER OF COVERAGE UNDER THIS PERMIT.** For storm water discharge associated with industrial activity for construction activities where the ownership changes, the Department must be notified of the title transfer within 30 days. If a storm water discharge associated with industrial activity for construction activities is covered by this general permit, the new owner(s) shall be subject to all terms and conditions of this general permit. A copy of the notice of transfer that was sent to the Department shall be included in the pollution prevention plan. For construction activity which is part of a larger common plan of development such as a housing or commercial development project, if a permittee transfers ownership of all or any part of property subject to this permit, both the permittee and transferee shall be responsible for compliance with the provisions of this permit for that portion of the project which has been transferred

including when the transferred property is less than five acres in area. If the new owner(s) agree in writing to be solely responsible for compliance with the provisions of this permit for the property which has been transferred, then the existing permittee(s) shall be relieved of responsibility for compliance with this permit for the transferred property, from and after the date the Department receives written notice of transfer of responsibility. A copy of the notice of transfer of responsibility shall be included in the pollution prevention plan.

G. **NOTICE OF DISCONTINUATION.**

1. Within 30 days after final stabilization at a construction site (as defined in Part VIII of this permit), the operator or owner of the facility shall submit a Notice of Discontinuation to the Department.
2. The Notice of Discontinuation shall include the following information:
 - A. the name of the owner/operator to which the permit was issued;
 - B. the general permit number and permit authorization number;
 - C. the date the construction site reached final stabilization; and,
 - D. the following certification signed in accordance with Part VI.G. of this permit:

"I certify under penalty of law that disturbed soils at the identified facility have been finally stabilized and temporary erosion and sediment control measures have been removed or will be removed at an appropriate time. I understand that by submitting this Notice of Discontinuation, that I am no longer authorized to discharge storm water associated with industrial activity for construction activities by Iowa Department of Natural Resources General NPDES Permit No. 2. and that discharging pollutants from storm water associated with industrial activity to waters of the United States is unlawful

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under the Clean Water Act where the discharge is not authorized by a NPDES permit."

PART III. SPECIAL CONDITIONS, MANAGEMENT PRACTICES, AND OTHER NON-NUMERIC LIMITATIONS

A. PROHIBITION ON NON-STORM WATER DISCHARGES.

1. All discharges authorized by this permit shall be composed entirely of storm water except for non-storm discharges listed in Part III.A.2.
2. Discharges from fire fighting activities; fire hydrant flushings; waters used to wash vehicles in accordance with Part IV.D.2.C.(2); potable water sources including waterline flushings; irrigation drainage; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; and foundation or footing drains where flows are not contaminated with process materials such as solvents; may be authorized by this permit provided the non-storm water component of the discharge is in compliance with Part IV.D.5. of this permit.

- B. RELEASES IN EXCESS OF REPORTABLE QUANTITIES.** Any owner or operator identified in the pollution prevention plan is subject to the spill notification requirements as specified in 455B.386 of the Iowa Code. Iowa law requires that as soon as possible but not more than six hours after the onset of a "hazardous condition" the Department and local sheriff's office or the office of the sheriff of the affected county be notified.

The storm water pollution prevention plan described in Part IV of this permit must be modified within 14 calendar days of knowledge of the release to provide a

description of the release and the circumstances leading to the release and to identify and provide for the implementation of steps to prevent the reoccurrence of such releases and to respond to such releases.

PART IV. STORM WATER POLLUTION PREVENTION PLANS

A storm water pollution prevention plan shall be developed for each construction site covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices. The plan shall identify potential sources of pollution which may reasonably be expected to affect the quality of the storm water discharge from the construction activities. In addition, the plan shall describe and ensure the implementation of practices which will be used to reduce the pollutants in storm water discharge associated with industrial activity for construction activities at the construction site and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. DEADLINES FOR POLLUTION PREVENTION PLAN PREPARATION AND COMPLIANCE.

1. **POLLUTION PREVENTION PLAN PREPARATION DEADLINE.** The pollution prevention plan shall be completed prior to the submittal of an NOI to the Department to be covered under this permit and shall be updated as appropriate.
2. **POLLUTION PREVENTION PLAN COMPLIANCE DEADLINE.** The pollution prevention plan shall provide for compliance with the terms and schedule of the plan with the initiation of construction activities.

B. SIGNATURE AND PLAN REVIEW.

1. The plan shall be signed in accordance with Part VI.G., and be retained at the construction site from the date construction activities begin to the date of final stabilization.

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2. The permittee shall make plans available to the Department upon request, or in the case of a storm water discharge associated with industrial activity for construction activities which discharge through a large or medium municipal separate storm sewer system with an NPDES permit, to the municipal operator of the system.
 3. The Department may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this Part. After such notification from the Department, the permittee shall make changes to the plan and shall submit to the Department a written certification that the requested changes have been made. Unless otherwise provided by the Department, the permittee shall have 7 days after such notification to make the necessary changes.
 4. All storm water pollution prevention plans received by the Department from the permittee are considered reports that shall be available to the public under Section 308(b) of the CWA and Chapter 22 of the Code of Iowa. However, the permittee may claim any portion of a storm water pollution plan as confidential in accordance with Chapter 22 of the Code of Iowa and Iowa Administrative Code (561)--2.5.
- C. **KEEPING PLANS CURRENT.** The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States and which has not been addressed in the plan or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified in Part IV.D.2. of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharge associated with industrial activity for construction activities. In addition, the pollution prevention plan shall be updated to: include contractors identified after the submittal of the Notice of Intent as CO-permittees, described in Part IV.D.7. of this

permit; identify any change in ownership or transference of the permit and permit responsibilities; or, if required, by the occurrence of a hazardous condition (as defined in Part VIII of this permit). Amendments to the plan may be reviewed by the Department of Natural Resources in the same manner as Part IV.B.2.

D. **CONTENTS OF THE POLLUTION PREVENTION PLAN.** The storm water pollution prevention plan shall include the following items:

1. **SITE DESCRIPTION.** Each plan shall, provide a description of the following:

A. a description of the nature of the construction activity;

B. estimates of the total area of the site and the area of the site that is expected to be disturbed by excavation, grading, or other activities;

C. an estimate of the runoff coefficient of the site after construction activities are completed and existing data describing the soil or the quality of any discharge from the site;

D. a site map indicating drainage patterns and approximate slopes anticipated after major grading activities, areas of soil disturbance, the location of major structural and nonstructural controls identified in the plan, the location of areas where stabilization practices are expected to occur, surface waters (including wetlands), and locations where storm water is discharged to a surface water; and

E. the name of the receiving water(s) and the ultimate receiving water(s).

2. **CONTROLS.** Each plan shall include a description of appropriate controls that will be implemented at the construction site. The plan will clearly describe the intended sequence of major activities and for each activity, the appropriate control measures and the timing during the construction process

that the measures will be implemented. (For example, perimeter controls for one portion of the site will be installed after the clearing and grubbing necessary for installation of the measure, but before the clearing and grubbing for the remaining portions of the site. Perimeter controls will be actively maintained until final stabilization of those portions of the site upward of the perimeter control. Temporary perimeter controls will be removed after final stabilization). The description of controls shall address the following minimum components:

A. EROSION AND SEDIMENT CONTROLS.

A.(1). STABILIZATION PRACTICES. A description of temporary and permanent stabilization practices, including site-specific scheduling of the implementation of the practices. Site plans should ensure that existing vegetation is preserved where attainable and that disturbed areas are stabilized. Stabilization practices may include: temporary seeding, permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures. Except as precluded by snow cover, stabilization measures shall be initiated on all disturbed areas as soon as practical but in no case where construction activity will not occur for a period of 21 or more calendar days later than the 14th day after no construction activity has occurred on such area. Where the initiation of stabilization measures by the 14th day after no construction activity occurs is precluded by snow cover, then stabilization measures shall be initiated as soon as practicable thereafter.

A.(2). STRUCTURAL PRACTICES. A description of structural practices to the degree attainable, to divert flows from exposed soils, store flows or otherwise limit runoff from exposed areas of the site. Such practices may include silt fences, earth dikes, brush barriers, drainage swales, sediment traps, check dams, subsurface drains, pipe slope drains, level spreaders, storm drain inlet

protection, rock outlet protection, reinforced soil retaining systems, gabions, and temporary or permanent sediment basins. Structural practices should be placed on upland soils to the degree attainable. The installation of these devices may be subject to Section 404 of the CWA.

A.(2).(a). For common drainage locations that serve an area with more than 10 disturbed acres at one time, a temporary (or permanent) sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control measures, shall be provided where attainable until final stabilization of the site. The 3,600 cubic feet of storage area per acre drained does not apply to flows from offsite areas and flows from onsite areas that are either undisturbed or have undergone final stabilization where such flows are diverted around the sediment basin. For drainage locations which serve more than 10 disturbed acres at one time and where a temporary sediment basin providing 3,600 cubic feet of storage per acre drained, or equivalent control is not attainable, sediment traps, silt fences, or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area.

A.(2).(b). For drainage locations serving 10 or less acres, sediment traps, silt fences or equivalent sediment controls are required for all sideslope and downslope boundaries of the construction area or a sediment basin providing storage for 3,600 cubic feet of storage per acre drained.

B. STORM WATER MANAGEMENT. A description of measures that will be installed during construction to control pollutants in storm water discharges that will occur after construction operations have been completed. The installation of these devices may be subject to Section 404 of the CWA. This permit only addresses the installation of storm water management measures, and not the ultimate operation and maintenance of such structures after the construction activities have been completed and the site has undergone final stabilization. Permittees

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are only responsible for the installation and maintenance of storm water management measures prior to final stabilization of the site, and are not responsible for maintenance after storm water discharges associated with industrial activity have been eliminated from the site.

B.(1). Such practices may include: storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; and infiltration of runoff onsite; and sequential systems (which combine several practices). A goal of 80 percent removal of total suspended solids from those flows which exceed predevelopment levels should be used in designing and installing storm water management controls (where practicable). Where this goal is not met, the permittee shall provide justification for rejecting each practice based on site conditions.

B.(2). Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel as necessary to provide a non-erosive velocity flow from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g. maintenance of hydrologic conditions, present prior to the initiation of construction activities).

C. OTHER CONTROLS.

C.(1). WASTE DISPOSAL. All wastes composed of building materials must be removed from the site for disposal in permitted disposal facilities. No building material wastes or unused building materials shall be buried, dumped, or discharged at the site.

C.(2). Off-site vehicle tracking of sediments shall be minimized.

C.(3). The plan shall ensure and demonstrate compliance with applicable State

or local waste disposal, sanitary sewer or septic system regulations.

D. APPROVED STATE OR LOCAL PLANS.

Facilities which discharge storm water associated with industrial activity for construction activities must include in their storm water pollution prevention plan procedures and requirements specified in applicable sediment and erosion site plans or storm water management plans approved by State or local officials. Applicable requirements specified in sediment and erosion plans, site permits or storm water management plans approved by State or local officials that are applicable to protecting surface water resources are, upon submittal of an NOI to be authorized to discharge under this permit, incorporated by reference and are enforceable under this permit even if they are not specifically included in a storm water pollution prevention plan required under this permit.

Operators of facilities seeking alternative permit requirements shall submit an individual permit application in accordance with Part I.C.2. of this permit along with a description of why requirements in approved State or local plans should not be applicable as a condition of an NPDES permit.

3. MAINTENANCE. A description of procedures to maintain in good and effective operating conditions vegetation, erosion and sediment control measures and other protective measures identified in the site plan.

4. INSPECTIONS. Qualified personnel (provided by the discharger) shall inspect disturbed areas of the construction site that have not been finally stabilized at least once every seven calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater.

A. Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion and sediment control measures identified in the plan shall

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be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of offsite sediment tracking.

B. Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph IV.D.1. of this permit and pollution prevention measures identified in the plan in accordance with paragraph IV.D.2. of this permit shall be revised as appropriate as soon as practicable after such inspection. Such modifications shall provide for timely implementation of any changes to the plan within 7 calendar days following the inspection.

C. A report summarizing the scope of the inspection, name(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph IV.D.4.B. of the permit shall be made and retained as part of the storm water pollution prevention plan for at least three years or until project termination. The report shall be signed in accordance with Part VI.G. of this permit.

5. **NON-STORM WATER DISCHARGES.** Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2. of this permit that are combined with storm water discharges associated with industrial activity from construction activities must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

6. **ADDITIONAL REQUIREMENTS FOR STORM WATER DISCHARGE FROM INDUSTRIAL ACTIVITIES OTHER THAN CONSTRUCTION, INCLUDING DEDICATED ASPHALT PLANTS, AND DEDICATED CEMENT PLANTS.** This

permit may only authorize a storm water discharge associated with industrial activity from a construction site that is mixed with a storm water discharge from an industrial source other than construction, where:

A. the industrial source other than construction is located on the same site as the construction activity;

B. storm water discharges associated with industrial activity from the areas of the site where construction activities are occurring are in compliance with the terms of this permit; and,

C. storm water discharges associated with industrial activity from the areas of the site where industrial activity other than construction are occurring (including storm water discharges from dedicated asphalt plants and dedicated cement plants) are in compliance with the terms and conditions, including applicable NOI or application requirements, of a different NPDES general permit or individual permit authorizing such discharges.

7. **CONTRACTORS.**

A. The storm water pollution prevention plan must clearly identify for each measure in the plan, the contractor(s) and/or subcontractor(s) that will implement the measure. All contractors and subcontractors identified in the plan must sign a copy of the certification statement in Part IV.D.7.B. of this permit in accordance with Part VI.G. of this permit. Upon signing the certification, the contractor or sub-contractor is a co-permittee with the owner and other co-permittee contractors. All certifications must be included in the storm water pollution prevention plan.

B. **CERTIFICATION STATEMENT.** All contractors and subcontractors identified in a storm water pollution prevention plan in accordance with Part IV.D.7.A. of this permit shall sign a copy of the following certification statement before conducting any

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professional service at the site identified in the storm water pollution prevention plan:

"I certify under penalty of law that I understand the terms and conditions of the general National Pollutant Discharge Elimination System (NPDES) permit that authorizes the storm water discharges associated with industrial activity from the construction site as part of this certification. Further, by my signature, I understand that I am becoming a co-permittee, along with the owner(s) and other contractors and subcontractors signing such certifications, to the Iowa Department of Natural Resources NPDES General Permit No. 2 for "Storm Water Discharge Associated with Industrial Activity for Construction Activities" at the identified site. As a co-permittee, I understand that I, and my company, are legally required under the Clean Water Act and the Code of Iowa, to ensure compliance with the terms and conditions of the storm water pollution prevention plan developed under this NPDES permit and the terms of this NPDES permit."

The certification must include the name and title of the person providing the signature; the name, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.

PART V. RETENTION OF RECORDS

- A. The permittee shall retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three years from the date that the site is finally stabilized.
- B. If there is a construction trailer, shed or other covered structure located on the property the permittee shall retain a copy of the storm water pollution prevention plan required by this permit at the construction site from the date of project initiation to the date of final

stabilization. If there is no construction trailer, shed or other covered structure located on the property, the permittee shall retain a copy of the plan at a readily available alternative site approved by the Department and provide it for inspection upon request. If the plan is maintained at an off-site location such as a corporate office, it shall be provided for inspection no later than two business days after being requested.

- C. ADDRESSES. All written correspondence to the Department should be sent to the following address:

Storm Water Coordinator
Iowa Department of Natural Resources
Henry A. Wallace Building
502 E. 9th St.
Des Moines, IA 50319-0034

PART VI. STANDARD PERMIT CONDITIONS

A. DUTY TO COMPLY.

1. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Code of Iowa and the Clean Water Act and is grounds for enforcement action; for termination of coverage under this general permit; or, for denial of a request for coverage under a reissued general permit.

2. TOXIC POLLUTANTS. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act (CWA) for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this permit has not yet been modified to incorporate the requirement.

- B. CONTINUATION OF THE EXPIRED GENERAL PERMIT. This permit expires on October 1, 2007. An expired general permit continues in force for 180 days after the expiration date. Only those facilities authorized to discharge under the expiring general permit are covered

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by the 180-day continuation of the expired general permit.

- C. **NEED TO HALT OR REDUCE ACTIVITY NOT A DEFENSE.** It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

- D. **DUTY TO MITIGATE.** The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

- E. **DUTY TO PROVIDE INFORMATION.** The permittee shall furnish to the Department, within a reasonable time, any information which the Department may request to determine compliance with this permit. The permittee shall also furnish to the Department upon request copies of records required to be kept by this permit.

- F. **OTHER INFORMATION.** When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Department, he or she shall promptly submit such facts or information.

- G. **SIGNATORY REQUIREMENTS.** All Notices of Intent, storm water pollution prevention plans, reports, certifications or information either submitted to the Department or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by the permittee, shall be signed in accordance with rule 567--64.3(8) of the Iowa Administrative Code as follows:

64.3(8) *Identity of signatories of operation permit applications.* The person who signs the application for an operation permit shall be:

a. *Corporations.* In the case of corporations, a principal executive officer of at least the level of vice-president.

b. *Partnerships.* In the case off a partnership, a general partner.

c. *Sole proprietorships.* In the case of a sole proprietorship, the proprietor.

d. *Public facilities.* In the case of a municipal, state, or other public facility, by either the principal executive officer, or the ranking elected official.

e. *Storm water discharge associated with industrial activity from construction activity.* In the case of a storm water discharge associated with industrial activity from construction as identified in 40 CFR 122.26(b)(14)(x), either the owner of the site or the general contractor.

The person who signs NPDES reports shall be the same, except that in the case of a corporation or a public body, monitoring reports required under the terms of the permit may be submitted by the person who is responsible for the overall operation of the facility from which the discharge originated.

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- H. **CERTIFICATION.** Any person signing documents under paragraph VI.G. shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false

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information, including the possibility of fine and imprisonment for knowing violations."

I. **OIL AND HAZARDOUS SUBSTANCE LIABILITY.** Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Clean Water Act.

J. **PROPERTY RIGHTS.** The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

K. **SEVERABILITY.** The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

L. **TRANSFERS.** This permit is not transferable to any person except after notice to the Department. The Department may require the discharger to apply for and obtain an individual NPDES permit as stated in Part I.C.

M. **PROPER OPERATION AND MAINTENANCE.** The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary

to achieve compliance with the conditions or this permit.

N. **INSPECTION AND ENTRY.** The permittee shall allow the Department or an authorized representative of EPA, the State, or, in the case of a facility which discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and,

3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

O. **PERMIT ACTIONS.** Coverage under this permit may be terminated for cause. The filing of a request by the permittee for a permit discontinuance, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

P. **ENVIRONMENTAL LAWS.** No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

PART VII. REOPENER CLAUSE

If there is evidence indicating potential or realized impacts or water quality due to any storm water discharge associated with industrial activity for construction activities covered by this permit, the owner or operator of such discharge may be required to obtain individual permit in accordance with Part I.C of this permit.

PART VIII. DEFINITIONS

"Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"CWA" or "Clean Water Act" means the Federal Water Pollution Control Act.

"Dedicated portable asphalt plant" means a portable asphalt plant that is located on or contiguous to a construction site and that provides asphalt only to the construction site that the plant is located on or adjacent to.

"Dedicated portable concrete plant" means a portable concrete plant that is located on or contiguous to a construction site and that provides concrete only to the construction site that the plant is located on or adjacent to.

"Dedicated sand or gravel operation" means an operation that produces sand and/or gravel for a single construction project.

"Department" means the Iowa Department of Natural Resources.

"Final Stabilization" means that all soil disturbing activities at the site have been completed, and that a uniform perennial vegetative cover with a density of 70% for the area has been established or equivalent stabilization measures have been employed.

"Hazardous condition" means any situation involving the actual, imminent, or probable spillage, leakage, or release of a hazardous substance on to the land, into a water of the state, or into the atmosphere, which creates an immediate or potential danger to the public health or safety or to the environment.
455B.381(2) 1991, Code of Iowa

"Hazardous substance" means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that, in confinement, generates pressure through decomposition, heat, or other means. The following are examples of substances which, in sufficient quantity may be hazardous: acids; alkalis; explosives; fertilizers; heavy metals such as chromium, arsenic, mercury, lead and cadmium; industrial chemicals; paint thinners; paints; pesticides; petroleum products; poisons, radioactive materials; sludges; and organic solvents. "Hazardous substances" may include any hazardous waste identified or listed by the administrator of the United State Environmental Protection Agency under the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, or any toxic pollutant listed under section 307 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous substance designated under section 311 of the federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous material designated by the secretary of transportation under the Hazardous Materials Transportation Act (49 CFR 172.101). 455B.381(1), 1991 Code of Iowa

"Large and Medium Municipal Separate Storm Sewer System" means all municipal separate storm sewers that are either:

(i.) located in an incorporated place with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census; or

(ii.) located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or

(iii.) owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

"**Municipality**" means a city, town, borough, county, parish, district, association, or other public body created by or under State law.

"**NOI**" means Notice of Intent to be covered by this permit (see Part II of this permit.)

"**Runoff coefficient**" means the fraction of total rainfall that will appear at the conveyance as runoff.

"**Storm Water**" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"**Storm water discharge associated with industrial activity**" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR part 122. For the categories of industries identified in paragraphs (i) through (x) of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

For the categories of industries identified in paragraph (xi) of this definition, the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage,

loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State, or municipally owned or operated that meet the description of the facilities listed in these paragraphs (i)-(xi) of the definition) include those facilities designated under 40 CFR 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this definition;

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category (xi) of this definition);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373;

(iii). Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include

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sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vi) facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-4225), 43, 44, 45 and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under paragraphs (i)-(vii) or (ix)-(xi) of this definition are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is

beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR 503;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than one acre of total land area which are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-4225, (and which are not otherwise included within categories (ii)-(x));

"Storm water discharge associated with industrial activity for construction activities" means activities that fall under subparagraph (x) in the definition of storm water discharge associated with industrial activity.